

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -I)
KOLKATA**

**IA(IBC)/788(KB)2023
in
CP(IB)/259(KB)2021**

Under section 33(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Ways Estate Limited
(U01403BR2010PLC016413)

.... Corporate Applicant (Corporate Debtor)

And

In the matter of:

MR. AJAY KUMAR,
Resolution Professional of Ways Estate Limited

... Applicant

Order pronounced on: 31/1/2024

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For RP : Ms. Urmila Chakraborty, Adv.
Mr. Ajay Kumar, RP in person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/788(KB)2023** is an application filed under section 33(1) of the Insolvency and Bankruptcy Code, 2016 (in short "**IBC/Code**") by the Resolution Professional ("**RP**") of **Ways Estate Limited**, the Corporate Debtor, praying for passing order for liquidation of the Corporate Debtor. This application is

supported by an affidavit duly affirmed by the RP.

3. This Adjudicating Authority, on a petition filed u/s. 10 of the IBC read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Ways Estate Limited**, Corporate Applicant *vide* order dated 30/06/2022 in CP(IB)/259(KB)2021, has ordered initiation of CIRP against Ways Estate Limited, the Corporate Applicant (Corporate Debtor). Mr. Ajay Kumar was appointed as the Interim Resolution Professional (“**IRP**”).
4. In terms of regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements dated 02/07/2022 in **Form A** was published on 05/07/2022 inviting claims from the creditors in “*The Times of India*”, Patna and Bhopal Editions (English), “*AAJ*”, Patna Edition (Hindi) and “*Nav Bharat*”, Satna Edition (Hindi). A copy of the Form A was duly published on the IBBI Website on 03/07/2022. Committee of Creditors (“**CoC**”) was duly formed on 30/07/2022 with one sole Financial Creditor. At the first CoC meeting held on 06/08/2022, the CoC has approved and confirmed the appointment of the applicant as Resolution Professional (“**RP**”). A copy of the minutes of the 1st CoC meeting forms **Annexure ‘C’**.
5. Further newspapers advertisements were made by the applicant in “*Morning India*”, Patna Edition (English) and “*Sanmarg*”, Patna Edition, (Hindi) on 14/08/2022 inviting quotation for appointment of two valuers for valuation of land in Madhya Pradesh. Accordingly, two IBBI Registered Valuers were appointed, who have submitted their report. Copies of the said two Valuation Reports form **Annexure ‘H’** (Collectively). Average ‘fair market value’ as well as ‘liquidation value’ is Rs.73,10,500/- and Rs.58,48,400/- respectively.
6. Information Memorandum (“**IM**”) was prepared by the applicant on 16/08/2022. However, the IM could not be submitted to the members of the CoC since declaration of confidentiality was not furnished to the applicant as required

u/s.29(2) of the IBC. A copy of IM forms **Annexure 'E'**.

7. The applicant has issued notice through registered post for holding 2nd CoC meeting on 29/10/2022, which was adjourned to 31/10/2022 as there was no quorum. Also on 31/10/2022 there was no quorum. Thereafter, the applicant issued notice by Speed Post for holding CoC meeting on 11/01/2023. On 11/01/2023 also there was no quorum and the said meeting was adjourned to 12/01/2023. At the adjourned meeting of CoC not even a single member turned up. Consequently, Request for Resolution Plan (“**RFRP**”) could not be issued by the applicant, since no approval of the CoC could be obtained as required u/s. 25(2)(h) of the IBC.
8. Financial Statements of the Corporate Debtor for the Financial Years 2020-2021 and 2021-2022 have been duly audited on 17/10/2022, but filing of the same on the portal of the Ministry of Corporate Affairs could not be done due to paucity of funds.
9. It is stated in the application that 180 days CIRP period has expired on 26/12/2022 and total CIRP costs/expenses incurred up to 05/04/2023 is Rs.17,94,773/- out of which Rs.6,06,053/- was paid and balance amount of Rs.11,88,720/- is still due and outstanding. A details chart showing CIRP costs incurred, amount paid and balance outstanding as on 05/04/2023 forms **Annexure “J”**. The RP has obtained unsecured loans accumulated to Rs.3,00,000/- (Rs. 2,00,000/- on 08/10/2022 and Rs.1,00,000/- on 06/03/2023) to meet the CIRP cost.
10. The applicant issued a notice dated 23/03/2023 by Registered Post at the address given by them while submitting proof of claim for holding another CoC meeting on 31/03/2023. Since there are numerous Financial Creditors, the applicant has also made paper publications in “*The Times of India*”, Patna Edition (English) and “*AAJ*”, Patna Edition (Hindi) on 26/03/2023 for holding of CoC meeting on 31/03/2023. However, on 31/03/2023 there was no quorum. As such no approval

could be taken either for filing of liquidation application or any other approval for continuation, extension and completion of the instant CIRP.

11. Altogether two Progress Reports have been filed and both the Progress Reports were accepted vide order dated 14/03/2023.
12. It is stated in the application that the Corporate Debtor stopped accepting new bookings of land since September, 2016 and further stopped accepting instalments from customers since April, 2019. The only receipt or amount received by the Corporate Debtor after April, 2019 was of unsecured loans received from promoter directors or related parties amounting to a total of Rs.65,66,685/-. Further, the amounts paid or payments made by the Corporate Debtor after April, 2019 was the refunds / reimbursements made by the Corporate Debtor to customers / land brokers, for which the last payment was made on 22/03/2021, i.e., about 15 months before the commencement of CIRP, and payments for administrative / day to day expenses. All these amounts have been verified / tallied from the Bank Statements, and other documents and papers available. Since no payments or receiving were accepted from customers and further no loans, advances or any other similar payments etc. were made to any person or party, apart from refund to customers, no business or any sale, purchase transactions took place or were made after April, 2019, i.e., more than three years before CIRP commencement, no transaction audit or forensic audit was conducted. Also no remuneration or other benefits or allowances, apart from out of pocket expenses were paid to directors since incorporation of the Corporate Debtor.
13. The applicant has submitted his consent in Form AA under the provisions of section 34(1) of the IBC to act as the Liquidator of the Corporate Debtor along with valid AFA.
14. It is to be noted here that the 180 days CIRP period has ended on 26/12/2022. Since the CoC has not taken any interest in the CIRP of the Corporate Debtor and

was not even present in the CoC meetings, no steps for extension of CIRP as well as publication of Form G could be taken. Hence, the only option left is liquidation of the Corporate Debtor.

15. Accordingly, the applicant filed the instant application u/s. 33(1) being IA(IBC)/788(KB)2023 praying for passing of liquidation order. When this application came up for hearing on 28/07/2023, this Adjudicating Authority has passed directions for public announcement in two prominent newspapers, one in English and one in vernacular indicating the next date of hearing before this Adjudicating Authority, fixing next date of hearing on 23/08/2023. Accordingly, publication was made on 15/08/2023 in "*The Times of India*", Patna Edition (English) and "*AAJ*", Patna Edition (Hindi) and filed affidavit of compliance affirmed on 18/08/2023 annexing those publications. However, when the matter came up for hearing on 23/08/2023, this Adjudicating Authority directed for fresh publication conforming to Rule 35 of NCLT Rules 2016. Accordingly, fresh publication was again made on 01/09/2023 in "*The Times of India*", Patna Edition (English) and "*AAJ*", Patna Edition (Hindi) and filed affidavit of compliance affirmed on 16/09/2023 annexing those publication also.

16. Here, in this case, it appears that due to reluctancy of the Members of the CoC to attend the CoC meetings called and its adjournment thereof on –

- (a) 29/10/2022 and adjourned to 31/10/2022;
- (b) 11/01/2023 and adjourned to 12/01/2023; and
- (c) 31/03/2023 and adjourned to 01/04/2023

the RP was unable to conduct the CIRP process as per the provisions of the Code, e.g., seeking approval of CoC for extension of time period beyond 180 days as well as publication of Form G inviting Expression of Interest from prospective resolution applicants, etc. as such there was no visible progress made.

17. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass

an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

18. It has been submitted by the RP that the CoC has not taken any interest in carrying forward the proceedings under CIRP including seeking extension in time beyond the prescribed period as such the stipulations in Sec 33(2) are not abided by in the instant case. However the provision of Section 33 (1)(a) comes to our aid to deal with such a situation, whereby the order of liquidation can be passed by the Adjudicating Authority in case of non-receipt of any resolution plan before the expiry of the CIRP period, which is the case at hand.

19. This Bench, therefore, hereby orders as follows: -

a. IA(IBC)/788(KB)2023 filed by Mr. Ajay Kumar, RP of **Ways Estate Limited**, the Corporate Debtor, envis allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we hereby appoint **Mr. Aditya Kumar Tibrewal**, (Reg. No. IBBI/IPA- 001/IPP00743/2017-2018/11249 , having e-mail i.d. adityatibre@gmail.com of the Insolvency and Bankruptcy Board of India, Panel for January 1, 2024 to December 31, 2024 – Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His appointment shall be subject to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of

India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the **Registrar of Companies, Bihar**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, Bihar**.
20. The application bearing **IA(IBC)/788(KB)2023** shall stand disposed of in accordance with the above directions.
21. **CP(IB)/259(KB)2021** is to come up for filing of Periodical Progress Report on **19.02.2024**
22. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 31st day of January, 2024.

hb. & AJS [L.R.A]